**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 10228 of 1996**

**For Approval and Signature:**

**HONOURABLE MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**ARVINDBHAI CHHOTABHAI PATEL - Petitioner(s)**
**Versus**
**DAHYABHAI BHALABHAI VAGHRI & 12 - Respondent(s)**

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**Appearance :**

MR NV ANJARIA for Petitioner(s) : 1,
MR MB RANA for MR RK MISHRA for Respondent(s) : 1,
UNSERVED-EXPIRED (N) for Respondent(s) : 2,
MR MG NAGARKAR for Respondent(s) : 3 - 10.
MS MINI NAIR, AGP for Respondent(s) : 11 - 12.
MR DC DAVE for Respondent(s) : 13,

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**CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT**

**Date : 03/10/2007**

**ORAL JUDGMENT**

The petitioner before this Court is the successor-in-title of the owner of the disputed land

bearing Survey No.1090 admeasuring 1-Acre-20-Gunthas situated at Nadiad. The respondents nos.1 and 2 claimed to be the tenants in the said land. The respondents nos.3 to 10 are the heirs and legal representatives of the original owner Shri Gopalbhai Becharbhai Patel.

The petitioner and two others had purchased the disputed land from its original owner Shri Gopalbhai Becharbhai Patel by a registered sale-deed executed on 8th October, 1992. The said two others, being non-agriculturists, had subsequently relinquished their right and interest in the disputed land in favour of the petitioner. The petitioner thus became the exclusive owner of the disputed land. On application made by the petitioner, permission for non-agricultural use (N.A. use) of the disputed land came to be granted on 1st December, 1993 by order of the District Collector, Kheda on the terms and conditions mentioned in the said order. The said order dated 1st December, 1993 was challenged by the respondents nos.1 and 2 on 8th March, 1996 in Revision Application No.3/1996 preferred before the State Government. The

State Government, in exercise of power of suo motu revision, issued notice dated 20th April, 1996 in Revision Application No.2/1996 calling upon the petitioner to show-cause why the aforesaid order dated 1st December, 1993, for the reasons stated, not be cancelled. The said notice was replied by the petitioner. The State Government (Deputy Secretary (Appeals), Revenue Department), by common order dated 12th August, 1996 made on aforesaid Revision Applications Nos.2/1996 and 3/1996, cancelled the aforesaid order dated 1st December, 1993. Feeling aggrieved, the petitioner has preferred the present petition.

Mr.Anjaria has appeared for the petitioner. He has assailed the impugned order on the grounds that the State Government did not exercise its power of suo motu revision conferred by Section 211 of the Bombay Land Revenue Code, 1879 (hereinafter referred to as, **"the Code"**) within reasonable time. He has submitted that the revision application was in fact preferred by the respondents nos.1 and 2 after the expiry of the period of limitation of ninety days.

The said revision application was, therefore, not maintainable. He has next submitted that the revision application was allowed on the grounds that the District Collector had failed to take into consideration the distance from the canal passing nearby the disputed land; that the petitioner had made certain alterations contrary to the sanctioned plans and that the claim of the respondents nos.1 and 2 of being tenants in the land in question was pending before the Gujarat Revenue Tribunal. Until the said issue was resolved, the District Collector ought not to have granted the permission for N.A. use of the disputed land. Mr.Anjaria has submitted that none of the said objections was tenable. He has relied upon the revenue map produced on the record. He has submitted that the disputed land Survey No.1090 is at some distance from the canal. Many of the lands between the disputed land and the canal are already developed and constructed upon. Evidently, the existence of canal at some distance from the disputed land was no hindrance against granting permission for N.A. use of the said land.

As to the alterations made in the construction, he has submitted that the construction has been made in accordance with the sanctioned plan and no authority has yet found the construction to be contrary to the sanctioned plan.

As to the right of tenancy claimed by the respondents nos.1 and 2, he has submitted that the claim made under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 had been rejected by the concerned authority. The said decision has been confirmed by the Gujarat Revenue Tribunal by its judgment and order dated 18th September, 2000 made on Revision Applications Nos.59/1997 and 29/1998. He has submitted that the said judgment has not been questioned further and has become final.

By order dated 1st December, 1993 made by the District Collector, Kheda, the petitioner was permitted to make N.A. use of the disputed land on conditions, inter alia, that the construction shall be commenced within six months from the date of the said order and shall be completed within three years

of the said order. The exercise of power of suo motu revision conferred by Section 211 of the Code by the State Government after nearly three years from the date of the order was ex-facie belated. Moreover, the revision application against the aforesaid order dated 1st December, 1993 was registered on the application dated 8th March, 1996 made by the respondents nos.1 and 2. It was essentially a revision application preferred by the respondents nos.1 and 2 beyond the statutory period of limitation of ninety days. The revision application preferred by the respondents nos.1 and 2 was time-barred. Besides, as recorded hereinabove, the claim made by the said respondents of being tenants in the disputed land has finally been rejected. The said respondents, therefore, had no locus standi to challenge the aforesaid order dated 1st December, 1993.

As to the canal passing by the disputed land and the construction made in contravention of the sanctioned plan, it appears that there was no evidence before the State Government to support the said findings. The said findings were based merely on

suspicion. Exercise of suo motu power of revision after nearly three years on mere suspicion was uncalled for.

In above view of the matter, the petition is allowed. The impugned order dated 31st August, 1996 made by the State Government in suo motu Revision Application No.2/1996 and Revision Application No.3/1996 is quashed and set-aside. Both the Revision Applications Nos.2/1996 and 3/1996 are rejected. Notice dated 20th April, 1996 is set-aside. Rule is made absolute. The parties will bear their own cost.

**(Ms. R.M.Doshit, J.)**

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